

**OGC HAS  
REVIEWED.**

GENERAL COUNSEL'S OPINION NUMBER 53-4, DATED 3 APRIL 1953

A comprehensive review of the Agency's statutory authority to pay for medical treatment, hospitalization and travel expenses connected with hospitalization of its employees.

TO THE ASSISTANT DIRECTOR (PERSONNEL)

1. Memoranda recommending treatment or reimbursement for treatment in the cases set forth in (a) through (g) below, together with comments of the Chief, Medical Staff indicate a need for comprehensive review of the statutory authority upon which Agency Regulation [ ] is founded. A short summary of the fact situations in these cases is as follows:

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(a) A staff employee assigned to a foreign post was evacuated to the United States with the concurrence of the Medical Office, where he underwent two operations for the removal of a brain tumor.

(b) A staff employee, while on TDY and home leave from overseas, was diagnosed as having a malignant tumor and was operated on at a hospital in the United States.

(c) A staff employee suffered an attack of coronary thrombosis and was hospitalized while stationed in a foreign country. Claim for reimbursement was made to the Bureau of Employees' Compensation for medical expenses approximating \$400. The claim was denied on the ground that the claim is not reimbursable within the scope of the Federal Employees' Compensation Act.

(d) The dependant wife of the Chief of Station in a foreign country was forced to travel to another foreign country for medical treatment requiring hospitalization. Claim was made for cost of transportation and subsistence. Cost of medical expenses was not included.

(e) A staff employee, was hospitalized in a foreign country while on TDY from this headquarters, for strangulated ventral hernia. The Medical Office states that "there is no causal

EDITORIAL NOTE: Authorization of medical care for dependents and travel for hospitalization of dependents was provided the Department of State by an amendment to the Foreign Service Act of 1946 (P.L. 828, 84th Cong., 70 Stat. 704, approved July 28, 1956). The portions of this opinion referring to State Department authority are now obsolete insofar as that authority has been changed.

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relationship between the strangulation of the hernia and the subject's employment at the time."

(f) A staff employee makes claim for reimbursement for treatments by his own physician in the United States, for illness diagnosed as infectious hepatitis, recurrent. The Medical Office notes that he suffered an initial episode of hepatitis on duty with this Agency overseas in late 1949 and early 1950, for which he was hospitalized at his foreign post.

(g) A staff employee, was hospitalized in a foreign country for an appendectomy. She requests reimbursement for her medical expenses.

Basic Legislative Provisions

2. In order to resolve the varied questions presented by the subject cases, it is necessary to examine the pertinent portions of the legislation in which [ ] of Agency Regulations is grounded.

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[REDACTED] Title  
IX, Part E, of the "Foreign Service Act of 1946", Public Law 724, 79th Congress, dated August 13, 1946. It is there provided, under the subheading "Expenses of Treatment":

"Section 941. The Secretary may, in the event of illness or injury requiring hospitalization of an officer or employee of the Service who is a citizen of the United States, not the result of vicious habits, intemperance, or misconduct on his part, incurred in the line of duty while such person is assigned abroad, pay for the cost of the treatment of such illness or injury at a suitable hospital or clinic."

(c) The general authority for the payment of medical expenses of all federal employees is contained in Federal Employees' Compensation Act, dated 7 September 1916, Public Law 267, 64th Congress, as amended, which is titled, "An Act to provide Compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes." It is there provided, in part:

"Section 1. ...That the United States shall pay compensation as hereinafter specified for the disability or death of an employee resulting from a personal injury sustained while in the performance of his duty, but no compensation shall be paid if the injury or death is caused by the willful misconduct of the employee or by the employee's intention to bring about the injury or death of himself or of another, or if intoxication of the injured employee is the proximate cause of the injury or death."

"Section 40. DEFINITIONS

(g) The term "injury" includes, in addition to injury by accident, any disease proximately caused by the employment.

(h) The term "compensation" includes the money allowance payable to an employee or his dependents and any other benefits paid for out of the compensation fund..."

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"Section 7. OTHER PAYMENTS AND EXCLUSIVENESS OF REMEDY

(b) The liability of the United States or any of its instrumentalities under this Act or any extension thereof with respect to the injury or death of an employee shall be exclusive, and in place, of all other liability of the United States or such instrumentality to the employee, his legal representative, spouse, dependents, next of kin, and anyone otherwise entitled to recover damages from the United States or such instrumentality, on account of such injury or death, in any direct judicial proceedings in a civil action or in admiralty, or by proceedings, whether administrative or judicial, under any other workmen's compensation law or under any Federal tort liability statute...."

Legislative History of the Specific Authorities

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4. In addition, the specific authorities granted, present two major questions:

a. What is meant by the phrase "line of duty" contained in the State [ ] Does it equate to "performance of duty" stated in the Federal Employees' Compensation Act?

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b. What is the relationship between the State [ ] [ ] medical authorities and the authority granted by the Federal Employees' Compensation Act?

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5. In order to answer these questions, we may not presume that the authority granted State [ ] is in derogation of the authority granted the Bureau of Employees' Compensation. A later law will not be construed as repealing an earlier law unless the two laws are in irreconcilable conflict or unless the later law covers the whole ground occupied by the earlier and is clearly intended to be a substitute for it. If both laws can be made effective by reasonable construction, such construction will be adopted. It is necessary, therefore, to look to the reports of Congress relating to congressional consideration of the premises.

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6. [ ]

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[ ] It is necessary, therefore, to look to the record pertaining to the State Department legislation. Guidance on the intent of Congress relating to the Foreign Service medical provisions is found in House Report No. 2508, 79th Congress, 2nd Session, titled "Report of the Committee on Foreign Affairs, House of Representatives, to accompany H. R. 6967," dated 12 July 1946.

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(H. R. 6967 was enacted into law as the Foreign Service Act of 1946. The house hearings on this act were held in executive session and not published. The Senate Foreign Relations Committee held no hearings, and we believe, issued no report.) It is there stated at page 141, as discussion on the proposed legislation, under the sub-heading "Expenses of Treatment":

"The principle occupational hazard of the Foreign Service is the disease prevailing at the many unhealthy and tropical posts. A large percentage of officers and employees stationed at such posts eventually succumb to malaria and dysentery, while considerable number fall ill of other endemic diseases peculiar to certain posts. These diseases are incurred directly in the line of duty. They almost invariably involve substantial medical expense and occasionally require hospitalization for protracted periods. Apart from disease, there have been a number of cases of breakdown caused by overwork amidst difficult living conditions and by the isolation and strain of service abroad, particularly in recent years. It frequently happens that there exists at the post neither competent medical assistance nor adequate hospital facilities. At the present time it is a deplorable fact that there is almost nothing the Department can do, financially or otherwise, to assist Foreign Service personnel who fall ill of such diseases at their posts of duty. No medical officer or nurse is regularly attached to such establishments as the Embassy at Moscow or the Consulate at Lagos, unless there happens to be at the post a United States Public Health surgeon who can take time from his official duties under the immigration laws to diagnose illness among staff members: and he is not permitted to treat the illness. No funds are available to assist in the payment of such local medical or hospitalization facilities, if any. There is neither the authority nor the funds to pay for the transportation

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of the officer or employee to a nearby post where suitable medical or hospital assistance may exist.

"It is true that the United States Employees' Compensation Act of 1916, as amended, provides within certain limits for the reimbursement of medical and hospital expenses incurred as the result of illness or injury in the line of duty. The provisions of the act do not, however, cover more than a fraction of the problems besetting the Foreign Service. Again, the act does not relate to Foreign Service Officers but only to employees (later amended). It offers no solution in the case of the transportation expenses of an officer or employee to another post for treatment or hospitalization. It does not afford the basis for providing a nurse at a post such as Moscow.

"The absence of the services and facilities authorized by section 941-944 of the new legislation has seriously obstructed the efficient operation of the Foreign Service and has occasionally subjected individual officers and employees to grave hardship and heavy expense. It is nothing less than good business on a dollar-and-cents basis for the Government to provide such assistance and facilities for Foreign Service personnel."

With reference to transportation costs the report states at page 142:

"Section 942 is closely linked with Section 941 and permits the Secretary to pay the transportation expenses of an officer or employee of the Service to a suitable hospital or clinic. If it so happens that the nearest clinic is in the United States, as might be true in the border posts or those in the adjacent islands, the Secretary would be authorized to transport him to the United States...."

#### Construction

7. In general, the Bureau of Employees' Compensation recognizes as the types of cases coming within the purview of the Federal Employees' Compensation Act, (a) an injury sustained on the premises of employment during working hours, and (b) an illness contracted as a result of working under conditions made necessary by official duties. This coverage extends to federal employment any place in

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the world and provides compensation and medical care for employees suffering injuries while in the performance of their duties.

8. When we relate the BEC concept of "performance of duty" to the statements contained in the report of the Committee on Foreign Affairs, paragraph 6, supra, it is seen that the Congressional intent in the use of the phrase "line of duty" contained in State and CIA medical authorities cannot be equated to a liberal interpretation of the phrase "line of duty", which would be, "performance of duty." It is much broader than, and independent of the concept "performance of duty", contained in the Federal Employees' Compensation Act. In application, it encompasses "performance of duty" and extends to cover also illness and injury "not the result of vicious habits, intemperance, or misconduct on his part, incurred while on assignment abroad." The committee stated:

"It is true that the United States Employees' Compensation Act of 1916, as amended, provides within certain limits for the reimbursement of medical and hospital expenses incurred as the result of illness or injury in the line of duty. The provisions of the act do not, however, cover more than a fraction of the problems besetting the Foreign Service."

9. As to the second question, the relationship between the authorities granted specifically to State [ ] and those granted the Bureau of Employees' Compensation, we must first look to the nature of the authorities.

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a. The Federal Employees' Compensation Act provides, (1) full medical care; (2) compensation for loss of wages (in lieu of the application of sick and annual leave); (3) compensation for disability; and (4) compensation for death; for civilian employees, including civilian officers of the United States Government, who suffer illness or injury incurred in the performance of their duties.

b. The State [ ] authorities under discussion relate only to payment for, (1) the cost of treatment; and (2) transportation expense incident thereto; "of illness or injury requiring hospitalization of an officer or ... employee of the Agency ... incurred in the line of duty while such person is assigned abroad."

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10. From the above, it is clear that the State and CIA authorities are supplemental to the authority granted by Congress in the Federal Employees' Compensation Act. They do not impinge upon the much wider scope of benefits granted all civilian employees, by the latter act.

a. The State  acts do not authorize the payment of compensation for loss of wages, for disability, or for death; and

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b. For those injuries and illnesses that may be classed as incurred "in the performance of duty", the cost of treatment portion of the claim may be processed and paid by either CIA (or State) or the Bureau of Employees' Compensation.

#### State Department Regulations

11. In order to test the validity of many of the conclusions reached thus far, it is necessary to look to the regulations promulgated by the Secretary of State. In the administration of his authority under sections 941, et seq., of the Foreign Service Act of 1946, all payments made, and regulations pertaining thereto, have been under the careful scrutiny of the Comptroller General. The State medical program is purely overt and provision is made therefore in the yearly budget presented to Congress.

a. A general policy statement is found in Foreign Service Personnel Circular No. 2, subject, "Costs of Hospitalization and Travel to Hospitals," dated 21 March 1949. It is there stated, under the heading "Purpose":

"This instruction establishes policies and procedures governing the payment, in case of an illness or injury, of the cost of treatment at a suitable hospital or clinic, and of transportation to and from such a hospital or clinic where one does not exist in the locality. The primary purpose of this program is to relieve financial burdens placed upon the Foreign Service Personnel who suffer illnesses or injuries while on assignment abroad. The Department will not therefore approve trivial claims." (Emphasis supplied)

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b. The foregoing Personnel Circular has since been incorporated in sections 683, et. seq., Part IV, "Personnel", Foreign Service Manual. Section 683.1, "Conditions of Eligibility", provides in pertinent part as follows:

- a. ...
- b. The illness or injury incurred requires hospitalization as judged by the standards generally observed in entering a hospital in the United States as an in-patient.
- c. The illness or injury has been incurred or materially aggravated in the line of duty while assigned abroad. "Incurred in the line of duty" means incurred while assigned abroad or materially aggravated by Foreign Service duties in which the employee has engaged. "Assigned abroad" means while physically outside the continental limits of the United States pursuant to official orders.
- d. The illness or injury is not the result of vicious habits, intemperance, or misconduct on the part of the employee.
- e. The treatment is received at a suitable hospital or clinic, i.e., an institution established for the treatment of a (sic) sick, a dispensary, laboratory, physicians office, or other reputable establishment where a sick person is observed or treated, which has adequate facilities for the treatment of the patient's particular illness or injury. Treatment received at an office building, private home, or elsewhere may be considered as "a suitable hospital or clinic" only when treatment received is such as normally received in a hospital.

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- f. The illness or injury is not the result of negligence on the part of the employee, nor the result of taking an unwarranted risk, unless recovery is substantially retarded because the treatment is below the standard available in the United States.
- g. The medical and hospitalization expenses are directly related to the treatment of the illness or injury requiring hospitalization and are not excessive in relation to local prevailing prices for medical services and supplies. The rates charged by any available, suitable Government hospitals shall be used as a standard. Payment shall not be made for expenses incurred for personal convenience of the patient, such as telephone bills, extra services, or accommodations superior to what is normally required considering the nature and severity of the illness or injury.

No Coverage for Dependents

12. The Report of the Committee on Foreign Affairs, House of Representatives, in discussing the specific medical authorities granted in the Foreign Service Act made specific mention of the fact that,

"The absence of the services and facilities authorized... has occasionally subjected individual officers and employees to grave hardship and heavy expense. It is nothing less than good business on a dollar-and-cents basis for the Government to provide such assistance and facilities for Foreign Service personnel." (Emphasis supplied)

Although the problem of the care and transportation of dependents of employees who fall ill in foreign countries and thus place the individual employee in a position of grave hardship and heavy expense, was patently before the Congress, no provision was made for dependents. Congress in its wisdom granted the medical provisions in the State authority with respect to "an officer or employee of the Service who is a citizen of the United States".

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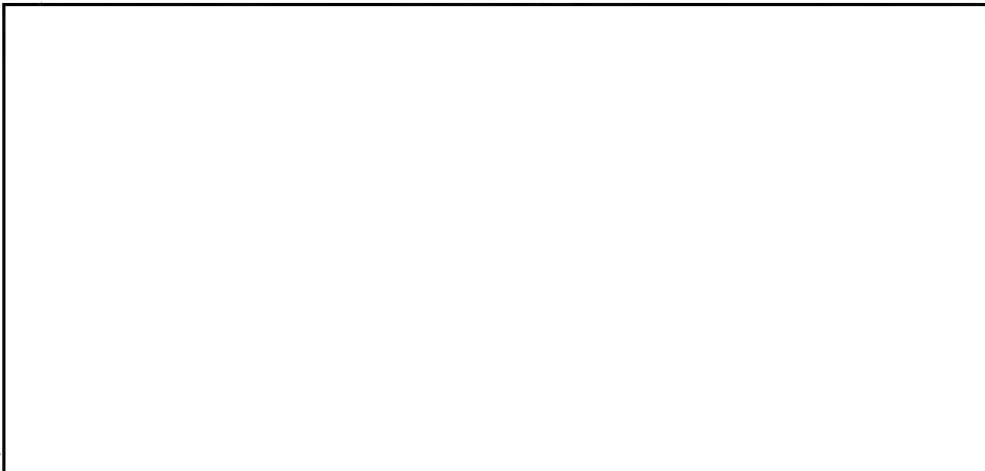
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bills paid directly), may well be in sharpest conflict with security considerations and the continuance of a given Agency operation. In such an instance the Agency would be forced to direct his travel to and hospitalization at, such a place as would best serve the interest of the Agency. If such direction should result in placing an individual taken sick in a foreign country in a hospital in the United States, rather than in a nearer place, it may or may not be of personal benefit to the individual. However, it would not be grounded in the authority of 5(a)(5)(A), a personal travel entitlement of the employee, nor would it be in derogation thereof. It would be based in the residual authority of the Director to expend funds for objects of a confidential, extraordinary, or emergency nature. Accordingly, such payments may more appropriately be considered, not as reimbursement of medical expenses of an employee, but rather as expenditures required for the preservation of security. In such a case, after certification by the Medical Office that a particular course of treatment is required, it is the responsibility of the operating division and the Security Office to certify the security requirement for a proposed course of action, to the Director of Personnel for final approval.

18. The following examples are given as an illustration of some of the recognizable types of cases that may on occasion require the application of the special authorities outlined:

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b. A staff employee [ ] is injured in the course of training. Upon recovery from the temporary disability, a broken arm or leg, etc., he is to be assigned on a sensitive project. Upon proper determination that the classified procedures for submission to BEC are not sufficient protection for intended utilization, the case might be processed in accordance with paragraph a.

c. An employee has a mental breakdown, either state-side or overseas. If overseas, authority is contained in 5(a)(5)(C) to pay the expenses of treatment at the nearest suitable hospital in order to relieve the financial burden on the employee. However, in a case of this type, Agency interest and application of other authorities might be mandated, at least in those cases where it is evident that the patient must be placed in the hands of cleared medical persons to assist in salvaging a highly trained individual for future utilization by the Agency, or in a hospital where the effect of possible disclosure of classified information would be to a large extent nullified.

Finding

19. In accordance with the foregoing, no legal objection is perceived to the approval of payment of the hospital expenses, if otherwise correct, in the cases outlined in paragraphs 1(a), (b) and (c).

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